

The Scottish Government Response to 'A Scotland for Children: A Consultation on a Children and Young People Bill'

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Ministerial Foreword



In the consultation on the proposals for a Children and Young People Bill, I set out the Scottish Government's ambition: to make Scotland the best place to grow up in.

It is a huge ambition. Yet as the very strong response to the consultation makes clear, the Scottish Government is not alone in holding such high aspirations for the children and young people of Scotland. The broad support for the proposals indicates a strong recognition that the Children and Young People Bill has a central role to play in realising our collective ambition.

I am very grateful to all those who responded to the consultation, and to those who took part in our extensive programme of engagement on the Bill. I am particularly delighted that over 2,400 children and young people have been engaged in activities in response to the Bill proposals, and would like to thank each of them for their involvement.

The message from the consultation and engagement could not be more clear: there is an appetite for the kind of change the Bill proposes. Children and young people deserve services that can intervene more effectively and earlier in their lives and that listen and take full account of their views and rights. Achieving this involves a programme of change that is not limited to any one service, but embraces a change in the culture and practice of all services that affect the lives of children, young people and their families. That change embodies the principles underpinning our wider approach to public service reform: the importance of services coordinating around the needs of individuals to provide person-centred care.

As the Government Response sets out, the views we have heard have been pivotal as we develop the Children and Young People Bill. This response will give you further detail on how we intend to proceed with the proposals. We are clear that there is no one policy or initiative that can bring about the kind of change required. However, the Children and Young People Bill will be a landmark in deepening the progress that has already been made, bringing about a step-change in the way that all services support children and young people and inspiring renewed debate and ambition for what Scotland's children and young people can expect.

We intend to introduce the Bill to Parliament this year so that children and young people can experience its benefits as soon as possible. I greatly look forward to working with you to improve the services we deliver and the outcomes we achieve for the children and young people of Scotland.

AILEEN CAMPBELL MSP

MINISTER FOR CHILDREN AND YOUNG PEOPLE

**The Scottish Government Response to ‘A Scotland for Children:
A Consultation on a Children and Young People Bill’**

Background

On 4 July the Scottish Government launched ‘A Scotland for Children: A Consultation on a Children and Young People Bill’.¹ The consultation ran for 12 weeks and closed on 4 September 2012.

The consultation proposed a Bill that will make real the Scottish Government’s aspiration for Scotland to be the best place to grow up in. It will do this by putting children and young people at the heart of planning and delivery of services and strengthening our approach to their rights throughout the public sector.

The consultation proposed a Bill that would:

- Further progress the realisation of children’s rights through duties on: Scottish Ministers to advance and raise awareness of the rights of children and young people, as set out in the United Nations Convention on the Rights of the Child (UNCRC); the wider public sector to report on what they are doing to advance these rights; and extended powers for the Children’s Commissioner to undertake investigations of potential infringements of rights of individual children and young people;
- Improve the way services support children and families by creating a single point of contact around every child and young person through the role of the Named Person and by ensuring that there is single, coordinated planning around all children who require support from services;
- Strengthen the role of early years support in all children’s lives by increasing the provision and flexibility of free early learning and childcare from 475 hours a year to a minimum of 600 hours for 3 and 4 year olds and 2 year olds who are looked after; and
- Ensure better permanence planning for looked after children by: extending support to young people leaving care for longer (raising their entitlement age to 25); supporting the parenting role of kinship carers through new legal entitlements; extending corporate parenting across the public sector through a new duty; and making the adoption process quicker and more effective by putting Scotland’s National Adoption Register on a statutory footing.

An analysis report outlining the findings of the consultation was published on the Scottish Government website on 4 December 2012.² This Scottish Government response sets out how Scottish Ministers have considered the findings of the consultation exercise and feedback from informal engagement activity, and outlines what will be included in the Bill.

¹ Scottish Government, *A Scotland for Children: A Consultation on the Children and Young People Bill* (2012)

² Scottish Government, *Analysis of Responses to the Children and Young People Bill Consultation* (2012)

The Scottish Government Response to ‘A Scotland for Children: A Consultation on a Children and Young People Bill’

The Scottish Government Response

The Scottish Government is grateful for the time that individuals and organisations have taken to consider the Bill proposals, suggest what could be done differently, submit responses and organise and attend consultation events.

In total, 300 written responses to the consultation were received. In addition to the formal public consultation, a programme of engagement activity with stakeholders, partners and colleagues was also undertaken over summer 2012. The activity included, but was not limited to: national engagement events with over 800 professionals; tailored meetings involving over 150 organisations; and engagement with over 2,400 children and young people. This engagement is continuing throughout the development of the Bill, and will do so throughout its Parliamentary passage and implementation.

Scottish Ministers have considered the views put forward through both the formal consultation and the additional engagement activity, and it is clear from the vast majority of the responses that there is strong support for the Bill. Taking on board all views received, the Scottish Government will proceed with the introduction of a Children and Young People Bill to the Scottish Parliament this year. There were a number of issues raised during consultation and engagement and those are addressed in this document.

Summary of Consultation Responses

Overall, respondents were broadly supportive of all the Bill proposals. The main findings were as follows:

- Most (70%) of those who provided a view considered that the legislative proposals would improve the transparency and scrutiny of the steps being taken by Scottish Ministers and relevant public bodies to ensure the progressive realisation of children’s rights.
- There was much support (84% of those who commented) for the proposed definition of the wellbeing of a child or young person based on the eight Wellbeing Indicators known by the acronym ‘SHANARRI’ (safe; healthy; achieving; nurtured; active; respected; responsible; included).
- 80% of those who provided a view supported the proposal to place a duty on public bodies to work together to jointly design, plan and deliver policies and services and ensure that they are focussed on improving children’s wellbeing.
- Most (70%) of those who commented agreed that reporting arrangements should be put in place which make a direct link for the public between local services and outcomes for children and young people, so long as any measures used are meaningful, realistic and measurable.
- The majority (76%) of those who addressed the topic considered that the Scottish Government should increase the number of hours of funded early learning and childcare and a majority (83%) supported an increase in flexibility. Key benefits

The Scottish Government Response to ‘A Scotland for Children: A Consultation on a Children and Young People Bill’

identified included opening up more employment and education opportunities for parents whilst providing seamless services for children.

- 72% of respondents who provided a view supported the proposal to provide a point of contact for children, young people and families through the Named Person role. This was seen as particularly helpful in cases where children and young people had additional or complex needs.
- Most (76%) of those who commented agreed that a single planning approach would help improve outcomes for children.

More Effective Rights for Children and Young People

The Scottish Government is committed to recognising, respecting and promoting the rights of children and young people in Scotland.

The consultation contained a number of legislative proposals intended to further this commitment. It proposed:

- A duty on Scottish Ministers to take appropriate steps to further the rights set out in the UNCRC;
- A duty on Scottish Ministers to promote and raise awareness of the rights of children and young people;
- A duty on Scottish Ministers and the wider public sector to report on the steps they have taken which further the rights set out in the UNCRC; and
- Extending the rights of Scotland’s Commissioner for Children and Young People to undertake investigations on behalf of individual children and young people.

What You Said

The consultation analysis and informal feedback gathered indicated that the majority of stakeholders were supportive of the proposals. 70% of respondents agreed the legislative proposals would provide for improved scrutiny and transparency of the steps being taken by Scottish Ministers and relevant public bodies to ensure the progressive realisation of children’s rights. They felt that the proposals would help raise awareness and provide a higher profile for children’s rights, reflect UNCRC obligations, and promote a consistent approach across Scotland.

The consultation indicated consistent views on which public bodies should be required to undertake the reporting duty. 15% agreed with the list provided through the consultation (which was a list of all relevant public bodies working directly or indirectly with children and young people). 33% stated specifically that all public bodies who work directly or indirectly with children and young people should have the duty to apply to them. 7% of respondents felt that all agencies (statutory, voluntary and commercial) involved with children and young people should be included.

The Scottish Government Response to ‘A Scotland for Children: A Consultation on a Children and Young People Bill’

69% of respondents agreed with the proposal to extend the Children’s Commissioner’s role. They stated that, amongst other reasons: it was likely to be a child friendly means of redress; the Commissioner is viewed as independent; it would support implementation of the UNCRC; and it would be particularly appropriate for individual cases where the child has very complex needs.

The Scottish Government Response

Based on the positive consultation responses to these proposals, and the consistent views brought out through informal engagement, the Scottish Government will proceed with the inclusion of all of these provisions in the Bill.

In addition, feedback from the national engagement events and tailored engagement indicated a strong appetite from stakeholders for the duty to promote and raise awareness to be extended to ‘awareness and understanding’, and Scottish Ministers feel this is a welcome addition.

Therefore, the Bill will include the following:

Duties on Scottish Ministers to Take Appropriate Steps to Further, Promote and Raise Awareness and Understanding of the Rights of Children and Young People as set out in the UNCRC

This will comprise a duty on Scottish Ministers to keep under consideration whether there are any steps they could take which would or might secure further effect in Scotland of the UNCRC requirements, and if they consider it appropriate to do so, to take any of the steps identified by that consideration

It will also include a duty on Scottish Ministers to promote public awareness and understanding of the rights of children.

This approach will future proof the Scottish Government’s existing approach to implementation of the UNCRC. It does so by explicitly recognising the Scottish Ministers’ responsibility to keep under consideration their approach to UNCRC implementation and to reflect the UNCRC in legislation, policy and practice where appropriate.

These provisions will help to raise further awareness and provide a higher profile for children’s rights.

A Reporting Duty on Scottish Ministers and the Wider Public Sector

The Bill will place a duty on Scottish Ministers to lay a report before Parliament every 3 years on the steps they have taken to further those rights set out in the UNCRC. It will require the public bodies listed below to publish a report, again every 3 years and in a manner which they consider appropriate, setting out the steps they have taken to further the rights set out in the Convention.

These provisions will further improve transparency, scrutiny and accountability of the approach being taken by Scottish Ministers and the wider public sector to progress the realisation of children’s rights.

The Scottish Government Response to ‘A Scotland for Children: A Consultation on a Children and Young People Bill’

Public Bodies

- Local authorities
- Children’s Hearings Scotland
- Scottish Children’s Reporter Administration
- Health boards
- Healthcare Improvement Scotland
- Scottish Qualifications Authority
- Skills Development Scotland
- Social Care and Social Work Improvement Scotland (Care Inspectorate)
- Scottish Social Services Council
- Scottish Sports Council
- Police
- Scottish Police Authority
- Scottish Fire and Rescue Service
- Scottish Legal Aid Board
- Mental Welfare Commission for Scotland
- Scottish Housing Regulator
- Bòrd na Gàidhlig
- Creative Scotland

Extension of Children’s Commissioner Powers

The Bill will include provisions that extend the powers of Scotland’s Commissioner for Children and Young People, enabling the investigation of whether a service provider has properly considered the rights, interests and views of an individual child when making decisions or taking actions affecting them. Upon conclusion of any investigation the Commissioner may lay a report before Parliament and can require a response to any recommendations made to service providers. This investigatory function will sit alongside, but should not duplicate, work of other existing investigatory bodies such as the Scottish Public Sector Ombudsman and the Care Inspectorate.

A Focus on Wellbeing

The Scottish Government believes it is essential that services take a holistic approach to a child’s wellbeing. The consultation proposed making clear this approach by providing a definition of wellbeing that should underpin all Bill provisions.

What You Said

Emerging from the consultation and engagement activity was an overwhelming sense of support for the proposal that the Bill would define wellbeing and that this definition would underpin all relevant Bill provisions. 84% of consultation respondents agreed with the definition of wellbeing as set out through the consultation. The most common reasons for this agreement were that the definition was holistic and captured a wide range of factors, and that the SHANARRI Wellbeing Indicators were already being used by practitioners, were well recognised, provided a common language and understanding and promoted consistency in approach. 90% of respondents agreed that a wider understanding of a child or young person’s wellbeing should underpin our proposals, mainly because it avoided a narrow consideration of children’s needs by a single service, and it helped services/agencies to realise their impact on children and their responsibilities to them.

The Scottish Government Response

The Bill will include requirements on local authorities to have regard to the general principle of wellbeing when it exercises functions in relation to a child who it looks after or who is in need. Wellbeing will be defined as: safe; healthy; achieving; nurtured; active; respected; responsible; and included. Ministers will issue guidance on how these wellbeing indicators are to be used to measure a child’s wellbeing. This provision will ensure services take a holistic view of each child’s wellbeing and their needs.

Better Service Planning and Delivery

The consultation proposed a new duty that brings together, clarifies and firmly embeds existing joint working approaches across the public sector, taking account of the legislation already in place to ensure an appropriate fit. This will mean those bodies responsible for expenditure, planning and delivery of services should work together in considering how to improve the whole wellbeing of children and young people in their area.

What You Said

80% of consultation respondents supported the duty saying that joint working was important in the context of improving children’s and young people’s wellbeing. Many respondents had experience of current good practice in this regard, and considered that formalising this in statute would strengthen such practice, making it more robust, and consistent, while providing a foundation that can be built upon. There were many reasons for supporting this proposal, including a strong belief that strengthened duties could assist in addressing current barriers to further joint working and could

The Scottish Government Response to ‘A Scotland for Children: A Consultation on a Children and Young People Bill’

encourage resource sharing. There was also a strong feeling that such a duty would ensure that different agencies and organisations address a perceived culture of reluctance to share information.

This feedback was consistent with the very positive response received through informal engagement activity.

The Scottish Government Response

The Bill will include duties on local authorities and health boards to prepare a children’s services plan which sets out arrangements for the provision of all services having a significant impact on the wellbeing of children in that area. The plan should be designed to promote, support and safeguard the wellbeing of children in that area in a coherent way that is responsive to those children’s needs. It will be a requirement that local authorities and health boards involve a number of key service providers in the preparation of the plan. The public bodies that this duty will apply to are:

- Local authorities
- Health boards
- The Police Service for Scotland
- Scottish Fire and Rescue Service
- Scottish Children’s Reporter Administration
- Children’s Hearings Scotland
- The Scottish Court Service
- Scottish Ministers

It will also be a requirement that local authorities and health boards consult with a wider range of local service providers in preparing the plan. There will be a requirement for the plan to be submitted to Scottish Ministers and published as soon as reasonably practicable after it has been prepared, and the plan should also be kept under review. Children’s services must be provided in accordance with the plan.

This provision will clarify and embed existing joint working approaches across the public sector, complementing existing legislation and other planned legislation, such as the Adult Health and Social Care Integration Bill and the Community Empowerment and Renewal Bill.

Reporting on Outcomes

The consultation proposed placing a duty on relevant public bodies to assist the local authority on a common set of high level outcomes for children and young people.

The Scottish Government Response to ‘A Scotland for Children: A Consultation on a Children and Young People Bill’

The duty would include the ability of the Scottish Government, working in partnership with stakeholders, to set consistent indicators across Scotland.

What You Said

70% of respondents agreed that reporting arrangements should be put in place making a direct link for the public between local services and outcomes for children and young people. The main reason for supporting the proposal was that it would promote transparency and accountability. It was also seen as particularly helpful in complex areas such as domestic abuse, parents with learning disabilities and LGBT young people.

73% of respondents agreed that these reporting mechanisms should be based on the SHANARRI Wellbeing Indicators as set out through the consultation. The main reasons cited were that the SHANARRI Wellbeing Indicators were all encompassing and provided a holistic approach to measuring links between local services and outcomes for children and young people. Also, the use of SHANARRI was already widespread and well established, and there was already common understanding of the Indicators and a shared language had been developed.

Most of those responding to the question about which public bodies this reporting duty should apply to referred to their response to the previous question about which bodies the public sector reporting duty on the UNCRC should apply.

The Scottish Government Response

The Bill will include a duty on local authorities and health boards to report on a one yearly basis on the extent to which they have achieved the aims of the plan to improve the wellbeing of the children and young people in their local government area. There will be a requirement for other service providers to participate in the reporting process if requested. The public bodies that this duty will apply to are:

- Local authorities
- Health boards
- The Scottish Police Service for Scotland
- Scottish Fire and Rescue Service
- Scottish Children’s Reporter Administration
- Children’s Hearings Scotland
- The Scottish Court Service
- Scottish Ministers

This will give the public, and particularly children and young people, a full picture of how their wellbeing is being promoted, supported and safeguarded at a local level.

Early Learning and Childcare

The consultation proposed increasing the flexibility and amount of funded early learning and childcare by including provisions in the Bill which would require local authorities to:

- Secure a minimum provision of 600 hours per annum early learning and childcare for 3 and 4 year olds;
- Offer a range of uptake options to parents – these could include options such as compressed hours over 2 or 3 days, hours outwith term times, or longer sessions of early learning and childcare;
- Consult locally on the needs of parents and demand for places; and
- Provide a minimum provision of 600 hours per annum of early learning and childcare for looked after 2 year olds, including joint work with parents or carers where appropriate.

The consultation stated it would be important that local authorities consult locally on the needs of parents and local demand, but it would also be important for parents to be offered a range of agreed options so they are guaranteed consistency across Scotland. It offered examples of the ways this expanded provision could be delivered more flexibly.

What You Said

76% of respondents agreed that the Scottish Government should increase the number of hours of funded early learning and childcare. The reasons for supporting the proposals were wide ranging, including a feeling it would: provide for better outcomes and benefits to the child, especially vulnerable children; support gender equality, giving women more choice over returning to work; bring benefits to the economy; and provide an opportunity to integrate early learning and childcare.

Whilst providing support for the proposals, many respondents also identified operational, resourcing and other practical issues they felt would need to be resolved to enable implementation of the proposals. These included a strong belief that the scheme would need to be adequately funded; that there would be implications for workforce planning; that the proposals would have implications for staff training; and that there would be a need to maintain quality of provision.

83% of respondents agreed with the proposal that the Scottish Government should increase the flexibility of delivery of early learning and childcare. The benefits of this were focussed largely round the increased flexibility for families and the increased opportunity for employment, education and training. Other benefits included: a feeling that the proposals promoted seamless services for children; were particularly good for disabled children and/or those with additional support needs; and promoted equality and social integration within communities. Again, logistical, structural and resource challenges were identified as potential barriers to this proposal; along with

The Scottish Government Response to 'A Scotland for Children: A Consultation on a Children and Young People Bill'

concerns that the focus on childcare would be at the expense of learning, which could be diluted.

However, there was not a consensus on how to deliver this flexibility. In response to the question of whether all local authorities should be required to offer the same range of options, 40% agreed (mostly individuals and third sector organisations) but 46% disagreed, including the vast majority of local authorities and other key stakeholders. In general there were concerns about the resource, logistical and operational implications of the requirement to introduce more flexibility within the ambitious timescales proposed.

The main argument in favour of supporting the same range of options across local authorities was that it would achieve fairness and consistency, especially across local authority boundaries. The main arguments against were that local authorities were already starting from a wide range of variable provision and should be able to design services depending on local needs and circumstances. A common theme was that service provision in rural areas would necessarily differ from that in urban areas. Some felt that: offering the same range of options would be unworkable/impractical; offering the same ranges of options could stifle innovation and flexibility; and that it was more important to achieve equality of outcomes through local needs-led provision.

Both those in favour and against thought that local authorities could work within a broad framework of core options with scope to tailor to meet local needs.

On the question of how to manage cross boundary placements, 40% of respondents felt that these should be managed through legislation, 52% through guidance and 7% supported neither.

Finally, in relation to provision for 2 year olds who are looked after, 75% of respondents agreed that there should be this additional priority. Many felt that this should also apply to all vulnerable 2 year olds, including those already in kinship care, those living in poverty, and those with additional support needs. There were also comments in relation to balancing parenting input and supporting joint work with parents or carers where appropriate; and supporting individualised and flexible approaches such as: provision within a home environment; not assuming group care as most suitable; and making sure this provision does not add to the number of transitions of services.

The Scottish Government Response

The Bill will include provisions that require local authorities to provide a minimum of 600 hours of free early learning and childcare to 3 and 4 year olds, looked after 2 year olds and 2 year olds subject to a kinship care order.

Scottish Government officials have worked closely with stakeholders to determine a common framework and more favourable approach that meets the policy intention for provision to be more tailored to local needs. It is key that: quality of provision is paramount; flexibility is increased in response to local needs and circumstances; and

The Scottish Government Response to ‘A Scotland for Children: A Consultation on a Children and Young People Bill’

local authorities have the flexibility and creativity to implement flexibility and choices in response to those locally identified needs.

The Bill will therefore include a duty to consult with locally representative populations of parents of children under school age every 2 years to identify what patterns of hours best suit parental early learning and childcare needs. The Bill will also include a requirement for local authorities to respond to those views through published local plans or strategies. This means that provision will be more tailored to local needs and will take into account local differences, such as whether the area is rural or urban. Increased flexibility and provision of options and choices for parents will be delivered increasingly over time, and through transparent locally published plans and ongoing dialogue with parents.

In response to the additional priority for looked after 2 year olds, any 2 year old who is, or at any point since his or her 2nd birthday has been, looked after will be entitled to a minimum of 600 hours early learning and childcare up to when they become universally entitled as 3 year olds. This scope will also be widened to include those 2 year olds who are, or at any point since their 2nd birthday have been, cared for by kinship carers in receipt of a kinship care order. This also takes into account the responses to the kinship care proposals, which will now focus on the provision of additional support for kinship carers who have obtained a kinship care order; and, who are caring for a child who meets the eligibility test, to be set out in secondary legislation. Taken together, the measures are intended to be a positive incentive for kinship carers and their families to assert themselves in the solutions to the issues they face, which if left unchecked could lead to a child becoming – or remaining – looked after; as well as providing additional early learning and childcare consistently for those most vulnerable 2 year olds, with the minimum of transitions.

In response to concerns about different and more individualised approaches to those 2 year olds who are looked after, the proposals will allow for flexibility of hours and provision, including work with parents or carers and work in the home or other settings where this is in the best interest of the child. The default will be for a minimum of 600 hours early learning and childcare. Where this would not be in the best interest of the child, the assessment of need, and identification of alternative regular provision will require to be set out in the Child’s Plan.

The issue of cross-border placements will be addressed through guidance which will be developed in partnership with key stakeholders.

The particular issues raised about the need for adequate funding will be addressed through the Financial Memorandum which is being introduced alongside the Bill. The Financial Memorandum will consider the costs and savings associated with each Bill provision. It is being developed in partnership with a wide range of stakeholders.

The Named Person

The consultation proposed that every child in Scotland will have a Named Person from birth up to leaving school, with provisions made for children in special circumstances. The role of the Named Person would be set out in legislation and

The Scottish Government Response to 'A Scotland for Children: A Consultation on a Children and Young People Bill'

supplemented by guidance. It was also proposed that from birth up to school age, health boards would be responsible for ensuring all children have a Named Person, and for children and young people in public schools from school age up to 18 years (or until they leave school - whichever is later) as well as school-leavers, the local authority would be responsible for the Named Person and accompanying duties. Provision was also proposed to ensure that certain groups of children and young people, with a less typical pattern of involvement with health or educational services, would be provided with a Named Person.

What You Said

72% of respondents agreed with the proposal to provide a point of contact for children, young people and their families through the universal approach to the Named Person role. A common view amongst those agreeing was that they supported the proposal in principle, but would reserve judgement until more practical details had been worked up. The most common reason for support was that this provided a single point of contact for young people and their families, especially where the young person had additional needs. Other reasons included: that this was already operating successfully; it would provide consistency across Scotland; and it ensured early intervention.

The general view of respondents was that the proposed responsibilities of the Named Person were the right ones, but that it would be important to address resourcing and capacity issues associated with the proposal. Respondents felt that some flexibility was required over the proposed allocation of duty on public bodies.

Many respondents agreed with the arrangements for certain groups of children as set out were the rights ones. A recurring theme was for greater prescription regarding the arrangements for children and young people in independent and grant aided schools, and those in gypsy/traveller communities.

The Scottish Government Response

The Bill will include provisions that require health boards to provide children with a Named Person from birth up to school age and local authorities to provide children in public schools with a Named Person from school age up to 18 or until they leave school, whichever is the later. For children or young people in independent or grant aided schools or secure accommodation, those establishments will be required to provide Named Persons for those children. The Bill will include provisions to ensure that groups of children and young people with a less typical pattern of involvement with health or educational services are provided with a Named Person.

The Bill will place duties on relevant public authorities to share a concern they have about the child's wellbeing with the Named Person, if it is necessary to safeguard, support and promote the wellbeing of the child, and on the Named Person to share with other relevant public bodies information appropriate to addressing relevant concerns.

Each organisation that provides Named Persons will be required to publish information about the function of Named Persons and how to contact the Named

The Scottish Government Response to ‘A Scotland for Children: A Consultation on a Children and Young People Bill’

Persons in its area or establishment. They will also be required to provide each parent of a child or young person and the child or young person themselves, with information about how to contact either named persons in their area, or, if a child/young person is to enter a specific establishment (such as a school), the appropriate Named Person for them in that establishment.

The Bill will also include a requirement on relevant public authorities to provide the Named Person with any information they feel may be relevant to the exercise of the function of the Named Person. Guidance will be issued by Scottish Ministers to complement the Bill, and this will provide further detail on the practical implementation of the Named Person role.

The Child’s Plan

The consultation proposed introducing a duty on public bodies to ensure that all statutory planning and assessment relating to a child or young person’s wellbeing is appropriately integrated into a single framework and that all relevant planning activity in regard to individual children is brought together into a Child’s Plan.

What You Said

76% of respondents agreed the proposal will help improve outcomes for children. One recurring view was that the planning approach in itself cannot improve outcomes and should not be the main focus. Instead attention should be given to implementing the Plan and making it work in practice with the active involvement of appropriate agencies and the children and their families. Respondents in support of the proposal felt it would: improve outcomes for children; encourage a more joined up approach; and reduce bureaucracy.

Concerns about the proposal related to the juxtaposition with existing legislation involving plans required of different agencies. Greater clarity was sought over existing legislation which some respondents felt overlapped with this proposal. Also, some respondents felt the Child’s Plan might be trying to achieve too much.

Many respondents agreed in general terms that the involvement of children, young people and their families in the development of the Child’s Plan was important. It was felt that any arrangements should be age appropriate and mindful of setting expectations.

The Scottish Government Response

The Bill will ensure that a Child’s Plan is created for every child and young person who requires one. Not every child or young person needs a plan. Most will see their wellbeing needs addressed through the services provided generally to all children and young people. But where there is concern that a young person’s wellbeing will be adversely affected without a targeted intervention then a Child’s Plan will be prepared. The Child’s Plan will set out an overview of the child or young person’s needs, the actions which require to be provided to meet the assessed needs, who will undertake those actions, and the desired outcomes. Whilst there will be a requirement for the Child’s Plan to be kept under review, it is expected that review

The Scottish Government Response to ‘A Scotland for Children: A Consultation on a Children and Young People Bill’

and monitoring of the Plan will be largely driven by the child’s needs. In other words the timing will be dependent on the nature and intensity of needs and risks: the more severe, the more frequent the monitoring and review.

Health boards and local authorities will have responsibility for producing a Child’s Plan within their own agency when necessary, or for transferring responsibility should the Plan need to be coordinated by another agency. Other public bodies will have a duty to cooperate as required in the production of a Child’s Plan and its maintenance.

Much of the detail of what should be included in the Child’s Plan will be set out in regulation and guidance issued by Scottish Ministers. This regulation and guidance will also make clear the relationship between the Child’s Plan and other statutory planning mechanisms such as the Coordinated Support Plan as part of additional support for learning.

Right for Care Leavers to Request Assistance

The consultation proposed extending the right of young people leaving care to request help and financial assistance from a local authority up to the age of 25. The current cut-off age of 21 is out of step with typical families who may provide support to their children throughout their adult lives and it is known that care-leavers often face challenges in moving to independent living which their peers may not.

What You Said

88% of respondents agreed with this proposal, mainly because: it reflected what happened in wider society and families; was in keeping with evidence from outwith the UK; and addressed the issue of young people leaving care being developmentally younger than others in their peer group.

There were two main concerns with the proposal. Some respondents (24%) felt the proposal had considerable resource implications which would need to be addressed. 17% of respondents felt that, although young people would have the right to request assistance, this might not come to fruition. This was a view that consistently came across in feedback from detailed discussions with stakeholders during and after the consultation.

The Scottish Government Response

The Scottish Government has listened carefully to the views of stakeholders, partners and colleagues and agrees that a power for care leavers to request assistance will not necessarily mean they will receive support and assistance where required. Therefore, the Bill will include provisions that will require local authorities, when receiving a request for support and assistance from a care leaver (up to and including the age of 25 years old), to assess the request. If, after carrying out this assessment, the local authority is satisfied that the care-leaver has eligible needs which cannot be met through other means, the local authority will be required to provide such advice, guidance and assistance as it considers necessary for the purpose of meeting those needs. This assistance could be in the form of financial

The Scottish Government Response to ‘A Scotland for Children: A Consultation on a Children and Young People Bill’

support or assistance in kind. Eligible needs will be specified in an order to be made by Scottish Ministers, but it is anticipated that these will cover basic living needs.

Corporate Parenting

The consultation proposed a legislative change to define corporate parenting and to clarify the public bodies to which the definition applies. The intention was that this would help the Government to clarify the corporate parenting role for various professionals and support them in their role.

What You Said

88% of respondents agreed with this proposal based on the rationale set out in the consultation. A recurring theme was that, although the proposal was a step in the right direction, it had to be supported by a cultural shift in some organisations.

70% of respondents agreed that the definition of corporate parenting should refer to the collective responsibility of all public bodies to provide the best possible care and protection of looked after children and to act in the same way a birth parent would. For those respondents that disagreed, concerns mostly focussed on the term ‘act in the same way a birth parent would’ as they felt the parents of looked after children might not present the best role model of parenting.

The Scottish Government Response

The Bill will include provisions that: require every corporate parent to be alert to matters which, or which might, adversely affect the wellbeing of looked after children and formerly looked after young people under the age of 26; assess the needs of those children and young people for support and services it provides; promote the interests of those children and young people; seek to provide those children and young people with opportunities to participate in activities designed to advance their wellbeing; take action it considers appropriate to help those children and young people to access opportunities and support and make use of the services it provides; and to take any other action as it considers appropriate for the purposes of improving the way in which it exercises its functions in relation to those children and young people.

There will also be a requirement for corporate parents to collaborate with each other when exercising their corporate parenting responsibilities. Corporate parents will be required to prepare, consult on and publish a plan, and keep this under review. They will be required to report on how they are exercising their corporate parenting responsibilities and planning and collaborating, and to provide information to Scottish Ministers. Scottish Ministers will be required to lay a report before Parliament on how they have exercised their corporate parenting requirements at least every 3 years.

The public bodies that will be included as corporate parents are:

- Scottish Ministers
- Local authorities

**The Scottish Government Response to ‘A Scotland for Children:
A Consultation on a Children and Young People Bill’**

- National Convener of Children’s Hearings Scotland
- Children’s Hearings Scotland
- Principal Reporter
- Scottish Children’s Reporter Administration
- Health boards
- Healthcare Improvement Scotland
- Scottish Qualifications Authority
- Skills Development Scotland
- Social Care and Social Work Improvement Scotland
- Scottish Social Services Council
- Scottish Sports Council
- Chief Constable of the Police Service of Scotland
- Scottish Police Authority
- Scottish Fire and Rescue Service
- Scottish Court Service
- Scottish Legal Aid Board
- Commissioner for Children and Young People in Scotland
- Mental Welfare Commission for Scotland
- Scottish Housing Regulator
- Bòrd na Gàidhlig
- Creative Scotland
- Scottish Further and Higher Education Funding Council
- A body which is a “post-16 education body” or a “regional strategic body” for the purposes of the Further and Higher Education (Scotland) Act 2005

Kinship Care Order

In order to recognise the parenting role of kinship carers in legislation, we proposed a new order that would provide a firm foundation on which to build a lifelong permanent relationship between the child and their carer, but preserve the fundamental link between the child and their birth family. The order would also give the carer clear responsibility for all aspects of caring for the child and for taking decisions to do with their upbringing, offer an alternative to formal care and provide a right to request an assessment of need by the carer and a right to appropriate financial and non-financial support. The overall aim was to provide additional support that would assist kinship carers to provide safe and stable long-term care for children who might otherwise require or continue to require formal care.

What You Said

56% of respondents agreed that the proposal to introduce a new order for kinship carers was a helpful addition to provide children with a long-term, stable environment without having to become looked after. 24% respondents disagreed and 20% neither agreed nor disagreed. The main reasons given in support of the proposals were that: it would enable kinship carers to access support, financial or otherwise; it would avoid the child becoming formally looked after; and it would avoid the child unnecessarily going into foster care. Concerns about the proposal related to the belief that the added value of the proposals was not clear, and that the policy intention could be met more effectively through enhanced use of section 11 of the Children (Scotland) Act 1995. There were other concerns that the proposal would: result in duplication with existing orders under section 11 of the 1995 Act, and cause confusion, more bureaucracy and delays; and a worry that kinship carers might be reluctant to try to obtain the order. Feedback from the national engagement events and tailored meetings was consistent with that of the formal consultation.

The Scottish Government Response

The Scottish Government has held detailed discussions with kinship carers, local authorities and other key stakeholders to determine whether this proposal could be amended to achieve more effectively the policy intention of providing kinship carers with more support in order to improve the stability and permanence of care for the children they look after. Along with the consultation feedback, these discussions highlighted a number of improvements to the original proposals which would achieve the policy aim while addressing key concerns.

Therefore, the Bill will include provisions that enhance support provided to kinship carers who obtain an order under section 11(1) of the 1995 Act (for parental responsibilities and rights and/or a residence order). These would be designated a kinship care order, and if the child who is subject to the order satisfied any eligibility test that may apply (and which would be set out in secondary legislation), they would be entitled to additional support from the local authority (such support to be prescribed in secondary legislation). This support would help kinship carers to provide a more stable environment for the children in their care.

The Scottish Government Response to ‘A Scotland for Children: A Consultation on a Children and Young People Bill’

The precise balance of new rights and needs-based support will be determined in due course and in consultation with key stakeholders including local authorities and kinship carers. The Bill includes provision for at least 600 hours of early learning and childcare for all 2 year olds who are subject to a kinship care order. Some other forms of assistance might be linked to an eligibility test. It is expected that assistance will be time limited in most cases to around 3 years, to reflect the purpose of the kinship care order which is to help children stay within the wider family (and avoid unnecessarily becoming looked after, such as in foster care), and where necessary, with targeted and time-limited support. In addition to the early learning and childcare support above, it is anticipated that this package may include financial and practical support with the court petition, a start-up grant, transitional support where a kinship care order leads to a child ceasing to be looked after and financial, practical or in-kind support to meet the requirements of a section 11 Contact Order.

In order to further promote the role of kinship carers (whether or not with a kinship care order) and to drive forward public sector reform in this area, the Scottish Government also intends to provide families with additional entitlements when facing difficulties that, if left unchecked, could lead to a child becoming looked after. The Bill introduces a duty on local authorities to ensure that families in the early stages of distress who seek help are provided with appropriate forms of counselling (for example, family group conferencing or support with substance misuse) . This will be available where a child’s wellbeing would be at risk of being impaired – in particular where the child is at risk of becoming looked after – and is intended to act as an early and effective support mechanism, and where appropriate, it can be used to promote the role of a kinship carer.

An important feature of this entitlement to counselling is that families must be willing to engage with their issues and motivated to take control over the challenges they face. Local authorities will provide this assistance and will be afforded some discretion to determine the exact form that would be appropriate, depending on the circumstances of the family. Guidance will be issued to support local authorities with implementation. If used early and targeted on reducing the risk of a child becoming looked after, intensive family therapies such as Family Group Conferencing can have exceptionally high success rates. Combined with the revised kinship care order provisions, these additional measures should promote early stability and permanence and are expected to put downward pressure on the number of children who become looked after over the medium term.

National Adoption Register

The consultation proposed taking powers to put Scotland’s Adoption Register on a statutory footing, to require adoption agencies to provide it with prescribed information in relation to children considered suitable for adoptions and adoptive parents considered suitable to adopt. The intention is to better enable adoption agencies to match adoptive children more quickly with suitable adoptive parents, by establishing a single national register which contained information in relation to all children and adoptive parents that were yet to be matched.

The Scottish Government Response to ‘A Scotland for Children: A Consultation on a Children and Young People Bill’

What You Said

56% of respondents agreed with the proposal that adoption agencies should be required to match adoptive children and families through use of Scotland's Adoption Register, 23% disagreed and 21% neither agreed or disagreed. These results should be treated with caution, however, as closer examination of the responses indicated that many considered the question to be ambiguous. Advantages of the proposal highlighted by respondents related to the feeling that it would: a) speed up the adoption process itself; b) be useful in cases of specialist placing (for example on the grounds of the child's ethnicity or special needs); c) ensure a consistent approach to matching; and d) provide another option alongside the current tools for matching. Perceived drawbacks of the proposal included: that the Register might curtail local variation in approaches to securing appropriate placements; and that local authorities should be able to retain the discretion to apply different approaches on a case by case basis.

The Scottish Government Response

The Bill will put Scotland's Adoption Register on a statutory footing and require all adoption agencies to provide it with information in relation to children who ought to be placed for adoption and prospective approved adoptive parents, as prescribed by the Scottish Ministers in regulations. The Bill will also establish as an offence the disclosing of any information derived from the Register otherwise than in accordance with regulations.

Additional Provisions

A number of additional provisions will be included in the Bill that were not included in the consultation. The reason for this is that the need for these provisions was not identified at the time the consultation was launched. Engagement with relevant stakeholders on these provisions has, where it was considered necessary, been carried out and will continue as the Bill is introduced to Parliament, through its Parliamentary passage and implementation.

Children's Hearings – Area Support Teams

Paragraph 12 of Schedule 1 to the Children's Hearings (Scotland) Act 2011 provides that the National Convener of Children's Hearings Scotland must establish and maintain Area Support Teams (ASTs) for each designated area (consisting one or more local authority areas). Before establishing the ASTs, the Convener must obtain the consent of each constituent local authority. However, the AST establishment process that recently concluded has highlighted inconsistencies around the time taken to obtain the required consent from each local authority, and around differing conditions being set before consent has been granted. This process has identified that a more nationally consistent and efficient process would be beneficial to the Children's Hearings system. Such improvements to the process would offer benefits to children and young people, as volunteers within the Children's Hearings system would be more encouraged to join, or stay within, it if they can quickly and easily identify the structures/areas they would either be joining or being supported by. This

The Scottish Government Response to ‘A Scotland for Children: A Consultation on a Children and Young People Bill’

would enable them to, therefore, get on with the job at hand at directly, or indirectly, supporting Scotland’s most vulnerable children and young people.

Stakeholder engagement has included ongoing informal discussion with the main national volunteers’ representative groups, with the Convention of Scottish Local Authorities (COSLA) and with Children’s Hearings Scotland (CHS) since mid-2012, in order to monitor the issues affecting implementation of the Children’s Hearings (Scotland) Act 2011. The Scottish Government circulated a policy paper to key hearings system partners in December 2012 seeking views on proposals to make two changes to the 2011 Act through the Bill. A total of 27 responses were received, comprising 5 organisations, 11 groups and 11 individuals who work within the hearings system. A majority of respondents favoured the proposals to amend the 2011 Act. The new powers were welcomed as a means of helping to ensure consistent support for panel members moving forward and a way of avoiding long, drawn out discussions on AST structures in future

Therefore, the Bill will include provisions which amend the 2011 Act to remove the requirement that the National Convener obtain the consent of each constituent local authority before establishing ASTs, and replace it with a requirement to consult instead.

The addition of local authorities to the group of bodies obliged to assist the ASTs (which will in turn assist the National Convener) will ensure local authorities have a clear duty, and the National Convener will be better able to secure standardised, consistent support.

The Bill also contains a provision which imposes a requirement on local authorities to provide the National Convener with administrative support.

Amendment to Section 44 of the Criminal Procedure (Scotland) Act 1995

The Bill will contain a provision which will amend the Criminal Procedure (Scotland) Act 1995 (the CPA) to create a new right of appeal against a local authority decision to place a child in secure accommodation following an order made under section 44 of the CPA. Such an order is made when a child pleads guilty or is found guilty of an offence in respect of which it is competent to impose imprisonment on a person of 21 years or over (except an offence under section 9(1) of the Antisocial Behaviour etc. (Scotland) Act 2004).

The amendment to the CPA is simply intended to ensure that children who are placed in secure accommodation following an order being made under section 44 to this Act will have the same appeal rights as children who are placed in secure accommodation under the provisions of the Children’s Hearings (Scotland) Act 2011.

Substantial thought was given by stakeholders to the role of secure care as part of the Securing Our Future Initiative process, and joint views and recommendations were agreed. The secure accommodation provisions in the Children’s Hearings (Scotland) Act 2011 were the subject of debate during passage through the Scottish Parliament and give effect to some of those recommendations. As only a small number of orders are actually made under section 44 of the Criminal Procedure

The Scottish Government Response to 'A Scotland for Children: A Consultation on a Children and Young People Bill'

(Scotland) Act 1995, it is not considered that there will be significant resource implications, or that the change will be contentious among stakeholders.

Next Steps

Although significant consultation and engagement with stakeholders, partners and colleagues has been undertaken to date, this vital work will continue as the Bill develops, goes through the Parliamentary process and is implemented.

Work is underway with working groups comprised of key stakeholders to discuss the financial implications of the Bill provisions, and this is feeding into the development of the Financial Memorandum that will accompany the Bill when it is introduced to Parliament. Additional working groups have also been set up with stakeholders to begin consideration of the detail of the regulations and guidance that will be issued by Scottish Ministers to provide more specific information on how the Bill provisions should be implemented.

The Bill will be introduced to Parliament this year, with the intention of the early learning and childcare provisions commencing in 2014. Commencement dates for other provisions have not yet been confirmed and close work is being undertaken with stakeholders to determine a realistic timeframe.

Conclusion

The Scottish Government has been making real progress towards realising the ambition of making Scotland the best place to grow up in. The Children and Young People Bill will be critical in turning that movement into acceleration. In seeking to bring about the most significant shift Scotland has experienced in the way public services relate to and value children, the Bill does not aim to do this alone. It complements a wide range of other initiatives, working at national as well as local levels, operating from the public sector as well as third sector bodies, and stands on a decade of policy debate, innovation and determination to put key shared principles into action. It captures much of the best that has developed in the policy and practice and seeks to embed it within the way the whole public sector supports children and young people.

The Bill recognises the value that investment in the early years of a child's life is essential for their long-term wellbeing. For that reason, it proposes an expansion of the number, and a new way of achieving greater flexibility, of hours of early learning and childcare for Scotland's youngest children.

It sets out a new universal approach to early intervention through the Named Person and the Child's Plan, an integrated, person-centred system of public service to ensure there is consistency and coordination in how all children, young people and their families are supported throughout a child's life, wherever they live in Scotland.

It takes on the challenge of improving permanence for the most vulnerable children and young people by contributing to more flexible, effective arrangements for care, whether through adoption, kinship care, better transitions for young people up to the

**The Scottish Government Response to 'A Scotland for Children:
A Consultation on a Children and Young People Bill'**

age of 25 and a more deeply-rooted and widely-understood sense of corporate parenting in the public sector.

It puts children's rights at the heart of the public sector, making it clear that it is not just a matter of duty to be transparent about how different agencies are supporting those rights, but that the longer-term improvement in outcomes for children and young people can only come if the public sector constantly tests its understanding of what a child needs against a universal set of principles.

Lastly, the Bill declares a new, central goal for the public sector: a shared dedication to the wellbeing of children and young people. It is no longer a matter of public agencies seeing the needs of children and young people in isolation. The Bill proposes that there is a commitment to the whole development of children and young people, one that must be coordinated across different agencies and taken forward with families and communities.

The Bill expresses a Scottish Government ambition, but such ambitions can never be simply national. They must be deeply held in every part of the public sector and across Scotland. The Bill is the result of a collective recognition of what we need to do if we seek to do right by our children and young people. Many of the proposals have long histories, and are already part of public service experience in some parts of Scotland. They are the result of years of ambition displayed at local level or within individual agencies.

That is why the Scottish Government welcomes the evolution of the proposals as a result of the consultation. The Bill has benefited from extensive experience and wisdom in putting these shared principles across the public sector into action. The consultation has made clear a common goal and a clear appetite for a new approach to improving children's wellbeing. Now the Children and Young People Bill can move forward as the common way to achieve this.



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